

Hearing:

Paper No. 25

EWB/MM

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB

AUG. 20, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Chemalloy Company, Inc.
v.
Aluminium Rheinfelden GmbH

Opposition No. 105,477
to application Serial No. 74/592,092
filed on October 28, 1994

John F. McNulty of Paul & Paul for Chemalloy Company, Inc.

Gregory P. LaPointe of Bachman & LaPointe for Aluminium
Rheinfelden GmbH

Before Hanak, Hohein and Wendel, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Aluminium Rheinfelden GmbH (applicant) seeks to
register TIBLOY for "chemical compounds for use in metal
refining processes" (class 1) and for "unwrought and/or
partially wrought common metals and their alloys in rod,
sheet, wire and/or billet form for use in further metal
refinement and manufacturing processes" (class 6). The

application was filed on October 28, 1994, based upon a German registration which issued on September 21, 1994.

Chemalloy Company, Inc. (opposer) filed a notice of opposition alleging that long prior to 1994 it both used and registered the mark TI-LOY for scrap metal composed primarily of titanium for use in the manufacture of steel and ferro alloys. Continuing, opposer alleged that the contemporaneous use of opposer's mark TI-LOY and applicant's mark TIBLOY is likely to result in confusion.

Applicant filed an answer which denied the pertinent allegations of the notice of opposition and a counterclaim seeking to cancel opposer's pleaded Registration No. 1,669,141 for TI-LOY on the basis that said term is generic for the goods listed in the registration (scrap metal composed primarily of titanium for use in the manufacture of steel and ferro alloys). Subsequently, applicant withdrew its counterclaim.

Both parties filed briefs. Opposer took the testimony of its president Anthony C. Demos. Applicant made of record no evidence.

In any likelihood of confusion analysis, two key considerations are the similarity of the marks and the similarity of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to

the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

In this case, the uncontradicted testimony of Mr. Demos demonstrates that certain of applicant's class 6 goods are, despite differences in terminology, essentially identical to registrant's goods. Applicant seeks to register TIBLOY for common metals and their alloys for use in further metal refinement and manufacturing processes. Opposer's registration of TI-LOY covers "scrap metal composed primarily of titanium for use in the manufacture of steel and ferro alloys." Obviously, the term "common metals" is broad enough to encompass "scrap metal composed primarily of titanium." Moreover, both applicant's common metals and opposer's scrap metal are for use in the manufacture or refinement of other metals such as steel.

As for applicant's class 1 goods (chemical compounds for use in metal refining processes), Mr. Demos testified that such compounds are routinely purchased by opposer's customers who must use said compounds in conjunction with opposer's scrap metal in order to manufacture steel and ferro alloys. Thus, applicant's class 1 goods are closely related to opposer's goods in that without said chemical compounds, opposer's scrap metal could not be processed to make steel and ferro alloys.

Turning to a consideration of the marks, we note at the outset that when the goods of the parties are almost identical or very closely related, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Obviously, both marks consist of six characters, with only the third character being different. Thus, in terms of visual appearance the marks are extremely similar.

Moreover, in terms of pronunciation the marks are likewise extremely similar. This is particularly true when one takes into account the fact that "there is no correct pronunciation of a trademark." In re Belgrade Shoe, 411 F.2d 1352, 162 USPQ 227 (CCPA 1969).

Finally, in terms of connotation we find that either both marks lack any connotation, or assuming the correctness of applicant's assertion that the letters TI would be recognized by consumers as the chemical abbreviation for titanium, then both marks have the same connotation, namely that the metals involved contain titanium and that applicant's chemical compounds are for use in the refining of metals containing titanium.

Given the fact that applicant's goods are nearly identical to or very closely related to opposer's goods and

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the additional fact that the marks are extremely similar in terms of visual appearance, pronunciation and connotation, we find that their contemporaneous use is likely to result in confusion.

Decision: The opposition is sustained.

E. W. Hanak

G. D. Hohein

H. R. Wendel
Administrative Trademark
Judges, Trademark Trial and
Appeal Board